

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APOTEX, INC.,)
)
Plaintiff)
)
v.) CIVIL ACTION
)
) No. 2:06-cv-2768
)
CEPHALON, INC., <u>et al.</u>)
)
Defendants)

**DECLARATION OF OMAR A. KHAN IN SUPPORT OF
DEFENDANT CEPHALON INC.'S MEMORANDUM IN OPPOSITION TO
PLAINTIFF APOTEX, INC.'S THIRD DAUBERT MOTION**

(REDACTED VERSION)

February 25, 2011

CONRAD O'BRIEN PC

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I, Omar A. Khan, hereby declare and state as follows:

1. I am an attorney admitted and in good standing with the New York Bar and an attorney at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Defendant Cephalon, Inc. I make this Declaration in support Defendant Cephalon Inc.'s Memorandum in Opposition to Plaintiff Apotex Inc.'s Third *Daubert* Motion.
2. Attached as Exhibit 1 is a true and correct copy of a letter from Greg Teran to Brian Sodikoff, dated November 11, 2010, filed under seal.
3. Attached as Exhibit 2 are true and correct copies of certain pages from the transcript of the January 11, 2011 deposition of Markus Antonietti ("Antonietti Dep. Tr."), filed under seal.
4. Attached as Exhibit 3 is a true and correct copy of the Amended Rebuttal Report of Dr. Markus Antonietti, dated December 7, 2010 ("Antonietti Rebuttal Rep't"), filed under seal.
5. Attached as Exhibit 4 is a true and correct copy of the Rebuttal Expert Report of Dr. Robert O. Williams, III, dated December 2, 2010 ("Williams Rebuttal Rep't"), filed under seal.
6. Attached as Exhibit 5 is a true and correct copy of the Expert Report of Dr. Lynn Van Campen, dated October 27, 2010 ("Campen Rep't"), filed under seal.
7. Attached as Exhibit 6 are true and correct copies of certain videos showing a bottle of modafinil tablets being opened by Dr. Campen, enclosed on a CD filed under seal with the Court.
8. Attached as Exhibit 7 is a true and correct copy of Section 3.2.P.8.1, Stability Summary and Conclusions, of Apotex's Canadian Abbreviated New Drug Submission (ANDS) for Apo-Modafinil 100mg Tablets, filed under seal.

9. Attached as Exhibit 8 is a true and correct copy of sections titled, Room Temperature Stability and Accelerated Stability Studies, in Apotex's Canadian Abbreviated New Drug Submission (ANDS) for Apo-Modafinil 100mg Tablets, filed under seal.
10. Attached as Exhibit 9 are true and correct copies of certain pages from Apotex's Abbreviated New Drug Application for Modafinil Tablets, 100mg and 200mg, filed under seal.
11. Attached as Exhibit 10 is a true and correct copy of a page from Apotex's Abbreviated New Drug Application for Modafinil Tablets, 100mg and 200mg, filed under seal.
12. Attached as Exhibit 11 are true and correct copies of certain pages from the transcript of the July 22, 2010 deposition of Elisabeth Kovacs ("Kovacs Dep. Tr."), filed under seal.
13. Attached as Exhibit 12 are true and correct copies of certain pages from the transcript of the July 15, 2010 deposition of Bernice Tao ("Tao Dep. Tr."), filed under seal.
14. Attached as Exhibit 13 are true and correct copies of certain pages from the transcript of the July 27, 2010 deposition of Bernard Sherman ("Sherman Dep. Tr."), filed under seal.
15. Attached as Exhibit 14 is a true and correct copy of a chain of email correspondence between Anne-Marie Yvon, Brian Sodikoff, and Greg Teran, dated November 5 through November 11, 2010, filed under seal.
16. Attached as Exhibit 15 is a true and correct copy of a chain of email correspondence between Brian Sodikoff, and Greg Teran, dated November 5 and November 10, 2010, filed under seal.
17. Attached as Exhibit 16 is a true and correct copy of the Rebuttal Report of Dr. Sanford A. Asher, dated November 12, 2010 ("Asher Rebuttal Rep't"), filed under seal.
18. Attached as Exhibit 17 is a true and correct copy of the Declaration of Claude Perron

Regarding Chain of Custody, dated February 16, 2011 (“Perron Decl.”), filed under seal.

19. Attached as Exhibit 18 is a true and correct copy of the Declaration of Jay Zakaib
Regarding Chain of Custody, dated February 2, 2011 (“Zakaib Decl.”), filed under seal.
20. Attached as Exhibit 19 is a true and correct copy of the Declaration of Brian Daley
Regarding Chain of Custody, dated February 21, 2011 (“Daley Decl.”), filed under seal.
21. Attached as Exhibit 20 is a true and correct copy of the Declaration of Brian Swites
Regarding Chain of Custody, dated February 23, 2011 (“Swites Decl.”), filed under seal.

February 25, 2011

/s/ Omar A. Khan

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